

REMARKS

Claims 1 through 30, 35 through 43, and 45 through 49 are pending in this Application. Claim 44 has been canceled without prejudice or disclaimer. Claims 1 through 30, 35 through 38, 40, 42, and 43 have been amended, and new claims 45 through 49 have been added. Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, the Abstract, FIGs. 1 through 3 and 7, ¶¶ [0021], [0027], [0031] through [0039], and [0048] through [0052] of the corresponding US Pub. No. 2005/0202872. Applicant submits that the present Amendment does not generate any new matter issue.

Personal Interview of June 29, 2010.

Applicant expresses appreciation for the Examiner's courtesy in granting and conducting a personal interview on June 29, 2010. During the interview, the Examiner indicated that the present amendments of claims 15, 45, and 46 would overcome the rejections of record. It is with that understanding that the present Amendment is submitted.

Claim 29 was rejected under 35 U.S.C. §101 as being allegedly directed to non-statutory subject matter.

In stating the rejection, the Examiner asserted that claim 29 recites a computer-readable medium that can be interpreted as transitory signals, directed to non-statutory subject matter. This rejection is traversed.

Specifically, independent claim 29 have been clarified by reciting “a computer-readable storage medium”, which constitute statutory subject matter under 35 U.S.C. §101. Applicant therefore solicits withdrawal of the rejection of claim 29 under 35 U.S.C. §101.

(1) **Claims 1, 2, 15, 16, 29, and 44 were rejected under 35 U.S.C. §102(b) as being anticipated by *Anttila et al.* (US 20030114224, “*Anttila*”).**

In stating the rejection, the Examiner asserted that *Anttila* discloses an apparatus identical to that claimed. Applicant respectfully traverses this rejection.

The factual determination of lack of novelty under 35 U.S.C. §102(b) requires the identical disclosure in a single reference of each element of a claimed invention, as those elements are set forth in the claims, such that the claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Praxair, Inc. v. ATMI, Inc.*, 543 F.3d 1308, (Fed. Cir. 2008); *Dayco Prods., Inc. v. Total Containnient, Inc.*, 329 F.3d 1358 (Fed. Cir. 2003); *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367 (Fed. Cir. 2002); *Candt Tech Ltd. v. Resco Metal & Plastics Corp.*, 264 F.3d 1344 (Fed. Cir. 2001). Moreover, when imposing a rejection under 35 U.S.C. §102 for lack of novelty, the Examiner is required to specifically identify where in the applied reference disclosed each and every feature of the claimed invention, particularly when such is not apparent as in the present case. *In re Rijckaert*, 9 F.3d 1531 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452 (Fed. Cir. 1984). Indeed, there are fundamental differences between the claimed method, apparatus, and computer readable storage medium and those disclosed by *Anttila* that scotch the factual determination that *Anttila* discloses, or even remotely suggests, a

method, apparatus, or computer readable storage medium identically corresponding to those claimed.

Specifically, independent claims 1, 15, and 29 recite, *inter alia*: “the game data is independent from the captured speech of the user.” The above stressed feature is neither disclosed nor suggested by *Anttila*. *Anttila*’s captured speech **is** the game data, such that there is only one set of data get transferred to a task server. *Anttila* only transfers the captured speech of a user to the task server, but not any “game data being independent from the captured speech of the user.”

Anttila transfers words spoken by users in sequence so as to assemble a funny story, and there is no comment of the users being transferred. In particular, the words are spoken in response to information requested by the game/task server, rather than comments between the users (¶ [0028]). In addition, *Anttila* is **not** enabled to transfer at the same time captured speech and game data independent from the captured speech. *Anttila* applies transmission mechanisms: SMS (¶ [0035]) and an internet browser (¶ [0036]), neither of which supports simultaneously transferring captured speech and game data independent from the captured speech.

On the other hand, the claimed inventions deploy technologies (e.g., Dual Transfer Mode DTM) that support simultaneously transferring captured speech and game data independent from the captured speech. DTM is a technology within the GSM/GPRS evolution towards the third generation systems with EDGE (Enhanced Data Rates for Global Evolution), with which it is possible to implement data and voice calls simultaneously (¶ [0036]).

The above-argued fundamental and functionally significant differences between the claimed method, apparatus, computer readable storage medium and those disclosed by *Anttila* undermine the factual determination that *Anttila* discloses a method, apparatus, computer

readable storage medium identically corresponding to that claimed, as required under 35 U.S.C. §102(b). *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565 (Fed. Cir. 1986). Applicant, therefore, submits that the imposed rejection of claims 1, 2, 15, 16, 29 and 44 under 35 U.S.C. §102(b) for lack of novelty based on *Anttila* is not factually viable, and hence, solicits withdrawal thereof.

(2) Claims 3 through 6, 10 through 14, 17 through 20, and 24 through 28 were rejected as obvious under 35 U.S.C. §103(a) based on *Anttila* in view of *Heden* (US 2006/0165027, "*Heden*").

(3) Claims 7 through 9 and 21 through 23 were rejected as obvious under 35 U.S.C. §103(a) based on *Anttila* in view of *Marejka et al.* (US 2003/0135639, "*Marejka*").

(4) Claims 30, 35, and 39 through 43 were rejected as obvious under 35 U.S.C. §103(a) based on *Anttila* in view of *Heden*.

(5) Claims 36 through 38 were rejected as obvious under 35 U.S.C. §103(a) based on *Anttila* in view of *Heden* and *Marejka*.

Each of the above-identified rejections (2) through (5) is respectfully traversed.

Specifically, Applicant incorporates herein the arguments previously advanced in traversing the imposed rejection of independent claim 15 under 35 U.S.C. §102(b) for anticipation predicated upon *Anttila*. Independent claim 30 recites features similar to those in independent claim 15 and, hence, is free of the applied prior art for reasons advocated *supra* with respect to independent claim 15.

The invention defined in independent claim 30 recites *inter alia*: “the game data being independent from the captured speech.” As previously argued this claim feature is neither disclosed nor suggested by *Anttila*.

The additional reference to *Heden* does not cure the previously argued deficiencies of *Anttila*. *Heden* merely teaches that a mobile station's capabilities be taken into account when negotiating quality of service for a service, not that a mobile station transfers both speech and game data independent from the captured speech using any of the identified connections, as claimed. The mere assertion that one having ordinary skill would have modified *Anttila* to negotiate a quality of service as taught by *Heden*, fails to provide correspondence to several of the limitations absent from the teachings of *Anttila*. For example, modifying *Anttila* to negotiate a quality of service does not provide for transferring speech and game data in *Anttila*'s system using specific transfer protocols, but rather, it would merely involve taking into account a device's capability to use such protocols when making a connection. Without correspondence to each of the claimed limitations, the §103(a) rejection is also improper, and Applicant requests that the rejection be withdrawn.

Heden, at best, uses a Dual Transfer Mode to run a CS service, e.g., speech, in parallel with a PS service, e.g., web-browsing (¶ [0030]), but not to simultaneously transfer both captured speech and game data independent from the captured speech.

The additional reference to *Marejka* does not cure the previously argued deficiencies in *Anttila*. *Marejka* merely sets a **ceiling** transmission threshold (Abstract), rather than a **floor** transmission threshold (claims 21 through 23). In particular, *Marejka*'s data transmission throttle determines whether messages exceed thresholds for the current transmission period, such as by

comparing the size of the message to a data flow counter, and controls data transmissions by the relay to not exceed the threshold and by resetting the counter for each threshold (Abstract).

Moreover, the assertion that a skilled artisan would look to the teachings of *Heden* or *Marejka* to modify the system of *Anttila*, lacks the requisite articulated reasoning to support the asserted motivation and does not withstand scrutiny. . First, the mere assertion that one would modify the teachings of *Anttila* does not explain why one having ordinary skill in the art would have been led to make the necessary modifications of *Anttila*. Second, *Heden* and *Marejka* make no mention of, and are unrelated to, transferring captured speech and game data. A skilled artisan using common sense would not look to *Heden's* negotiation of quality of service or *Marejka* check delay mechanisms to modify *Anttila's* game service. "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). "Not only must the claimed invention as a whole be evaluated, but so also must the references as a whole, so that their teachings are applied in the context of their significance to a technician at the time--a technician without our knowledge of the solution." *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143 (Fed. Cir. 1985). Therefore, Applicant respectfully submits that the requisite motivation to modify *Anttila* with the teachings of *Heden* and *Marejka* has not been established.

Indeed, as apparent from the foregoing analysis of the applied references, even if the applied references were combined as proposed by the Examiner, and Applicant does not agree that the requisite basis for the asserted motivation has been established, the claimed inventions would not result. *See Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044 (Fed. Cir.1988).

Applicant therefore submits that the above-identified rejections encompassing claims 3 through 14, 17 through 28, 30, and 35 through 43 under 35 U.S.C. 103(a) for obviousness based primarily on *Anttila* in view of *Heden* and/or *Marejka* is not factually or legally viable and, hence, solicits withdrawal thereof

New claims 45 through 49.

New independent claim 49 recite features similar to those in independent claim 15 and, hence, is free of the applied prior art for reasons advocated *supra* with respect to independent claim 15.

New claims 45 through 48 depend from independent claim 15. Applicant submits that 45 through 48 are free of the applied prior art for reasons advocated *supra* with respect to independent claim 15.

Further, Applicant separately advocates the patentability of claims 45 and 48 based on the limitations expressed therein. The applied prior art is silent with respect to the limitations in claims 45 and 48. Claim 45 recites that the captured speech of the user is transferred to the another mobile terminal through the radio connection **without going through a game server**, and the captured speech of the another user is received through the radio connection **without going through a game server**. In contrast, *Anttila* requires **a game/task server** to pass on the captured speech (“centralized task server” ¶ [0055]) from one user terminal to another user terminal and to assume the answers at the task server. Claim 48 recites that the captured speech includes one or more comments of at least one of the user and the another user. The users in *Anttila* merely say words in response to a game request from the task server, but not **comments**.

Accordingly, claims 45 through 49 are free of the applied prior art.

Based upon the foregoing, it is apparent that the imposed rejections have been overcome, and that all pending claims are in condition for allowance. Favorable consideration is therefore solicited. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at 703-822-7186 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

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Date

/Chih-Hsin Teng/
Chih-Hsin Teng
Attorney for Applicant(s)
Reg. No. 63168

918 Prince Street
Alexandria, VA 22314
Tel. (703) 519-9951
Fax (703) 519-9958